IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5025 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDRAKANT BECHARLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5025 of 1998

PARTY-IN-PERSON for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/09/2001

ORAL JUDGEMENT

In this petition filed under Section 407 of the Code of Criminal Procedure (Code for short), petitioner

who is an accused in criminal case no. 1303 of 1995 on the file of learned Judicial Magistrate, First Class Vadodara Shri N.G.Parmar, has prayed to transfer the said criminal case from the court of learned JMFC, Vadodara Shri N.G.Parmar to any other court of Vadodara district, on the grounds stated in the petition.

2. From the averments made in the petition, it is manifest that the petitioner is one of the accused along with two others in connection with the complaint filed by one Nainaben with regard to the incident dated April 3, 1989 for commission of offences under Sections 323, 504, 506(2) and 114 of the IPC.

3. It is stated in the petition that on July 23, 1998, the case was called out in the first sitting and was adjourned. However, in second sitting, trial was proceeded and that has caused prejudice to the petitioner and on this ground the petitioner has prayed for the relief to which reference is made earlier in paragraph 1.

4. Today, when the matter is called out even in second round of the call, the petitioner, party in person, is not present. Mr. K.T.Dave, learned APP is present and contested the petition.

5. The first question that arises for consideration of this court is as to whether this court should dismiss the matter for default or examine the matter on merits of the case. In this connection Mr. Dave, learned APP has cited the decision of the Supreme Court in PARSURAM PATEL AND ANOTHER VS. STATE OF ORISSA - (1994) 4 SCC 664, wherein the Supreme Court has held that criminal appeal cannot be dismissed for default in appearance. The court must decide the matter on merit even in the absence of appellant(s) or his/their counsel.

6. Applying the aforesaid principle to the facts of the present case, though the petitioner is absent even in the second round of the call, instead of dismissing the matter for default, this court has decided to dispose of the matter on merits.

7. It may be appreciated that the petitioner is in habit of remaining absent. Earlier, the petition was dismissed for vide order dated February 22, 1999 for non-removal of the office objection. The petitioner, thereafter has filed Misc. Criminal Application No. 274 of 2000 for restoring the original petition and on other reliefs. However, ultimately, vide order dated May 3, 2000, present petition came to be restored treating Misc.

Criminal Application No. 274 of 2000 as an application for restoration. Thereafter again, petitioner remained absent and therefore, vide order dated January 19, 2001 this petition came to be dismissed for want of prosecution. The petitioner again filed Misc. Criminal Application No. 5260 of 2001 for restoration of the main petition. This court vide order dated July 25, 2001 restored the main petition and that is how this petition is placed before this court today.

8. Considering the fact that the petitioner is in the habit of remaining absent on one pretext or the other and more particularly in view of the judgement of Supreme Court in PARSURAM PATEL's case (supra), this court has decided the matter on merits.

9. The criminal case filed against the present petitioner along with two others has a chequered history. An FIR in respect of an indicent dated April 3, 1989 for the commission of the offences under Section 323, 504, 506(2) and 114 of the IPC was recorded way back in the year 1989. On investigation made by the officials of the concerned police station, offence was divulged against the present petitioner along with two others. Therefore investigating officer has filed chargesheet before the learned JMFC Vadodara where the criminal case was registered vide Criminal Case No. 945 of 1989 and thereafter it was again re-numbered as Criminal Case No. 422 of 1993. Thereafter charge was framed on September 23, 1993 and again the case was re-numbered as Criminal Case No. 1303 of 1995. The evidence of complaint was recorded on November 21, 1995 and a witness named Nimitaben was also examined on January 1, 1996. This Court (Coram: A.L.Dave, J) vide order dated February 8, 2001 recorded in Misc. Criminal Application No. 274 of 2000 had called for the remarks of the concerned Judicial Magistrate, First Class, and pursuant to the same, remarks of the learned JMFC Vadodara Shri N.G.Parmar was sent vide communication dated February 23, 2000 which has been perused by me also.

10. It may be noted that petitioner has also filed Criminal Misc. Application No. 863 of 1998 before the learned Sessions Judge, Vadodara, under Section 408 of the Code wherein the similar relief as claimed in this petition, was claimed by the petitioner. The learned Sessions Judge, Vadodara, vide order dated September 11, 1998 dismissed the petition for the detailed reasons stated in his judgement.

11. I have considered the submissions made by Mr.

K.T.Dave, learned APP for the respondent State. I have also perused the averments made in the petition as well as the remarks offered by the concerned Magistrate vide communication dated February 23, 2000 and the judgement and order dated September 11, 1998 recorded in Criminal Misc. Application No. 863 of 1998 by the learned Sessions Judge, Vadodara. It appears from the aforesaid record that the petitioner is using delay tactics and from February 6, 1996 to June 1998, the petitioner had asked for adjournments. The present petitioner has also filed Criminal Misc. Application No. 863 of 1998 before the learned Sessions Judge, Vadodara for the same relief which came to be rejected and on the same ground the petitioner has filed this petition. After considering the facts of the case and the judgement of the learned Sessions Judge, Vadodara, the petitioner, in fact the petitioner should have preferred revision application instead of filing the present Misc. Criminal Application before this court. But, according to me, since the petitioner is appearing as a party in person, the petition should not be dismissed merely on technical ground.

12. The sole ground on which transfer of the case from one court to other court is sought for is that on July 23, 1998, the learned JMFC, Vadodara has not granted the adjournment, but according to the petitioner the case was already adjourned in the first sitting. It is required to be noted that the learned Sessions Judge has also held that the contention of the petitioner cannot be accepted that the case was adjourned in the first sitting and considering the facts and circumstances of the case, the learned Sessions Judge Vadodara has given cogent and convincing reasons for not entertaining the case for transferring the criminal case from the court of learned JMFC Vadodara, Shri N.G.Parmar to any other court. It may also be noted that the incident was reported way back in the year 1989 and, the criminal case pending before the leaned JMFC, Vadodara is very old and therefore, learned trial Judge has very rightly rejected the application since the witness is coming from Maharashtra.

13. On overall view of the matter, there is no valid reason to transfer the Criminal Case No. 1303 of 1995 from the court of learned JMFC, Vadodara, Shri N.G.Parmar to any other court of Vadodara district and therefore, the petition deserves to be rejected.

14. For the foregoing reasons, I find no merit in the petition. The petition therefore, fails and is accordingly rejected.

(A.M.Kapadia, J)

Jayanti*